IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CONTEMPT PETITION NO.411 OF 2004

Hansoti Co-operative Housing Society Limited. .. .. Petitioner

Vs.

Dr.Ramesh Chunilal Hansoti & Ors.. .. Respondents

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Shri M.P.Vashi i/b M/s.M.P.Vashi & Associates for the petitioner.

Shri Bipin Joshi for respondent Nos.1 and 2.

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CORAM : R.M.S.KHANDEPARKAR, J

DATED : 5th NOVEMBER, 2004.

P.C.

1. Heard the learned advocates for the parties. The grievance of the petitioner is that inspite of the order having been passed on 3rd July, 2004 till this date, the respondents have not complied with the order passed by the Maharashtra State Co-operative Appellate Court inasmuch as that neither the terrace has been cleared nor it has been made available for common use of all the members of the Society.

2. The learned advocate appearing for the respondents, on the other hand, stated that the said order is the subject matter of the Writ Petition No.8270 of 2004, and the learned Single Judge of this Court by his Order dated 26th October, 2004 had directed to maintain status quo pending the hearing and final disposal of the writ petition, after having issued the rule therein, and that therefore, there is no question of compliance of the said order, at this stage. The learned advocate for the petitioner, however, submitted that the status quo does not amount to stay of the order passed by the Co-operative Appellate Court and in any case, there has been non-compliance of the said order since July to October last and therefore, this is a fit case for proceeding against the respondents for contempt of Court..

3. Perusal of the order passed by the learned Single Judge on 26th October, 2004 in the Writ Petition No.8270 of 2004 discloses that the rule has been issued in the said Petition with the observations that "this petition undoubtedly raises some contentious points which in my opinion deserve consideration. It appears that during the pendency of the dispute there was no interim relief granted in favour of the respondent-society. Keeping that in

view and considering the overall facts and circumstances of the case Rule." However, the parties were directed to maintain status quo pending the hearing and final disposal of the said Writ Petition. It cannot be disputed, as it has been submitted by the learned advocate for the petitioner, that though the order for maintaining the status quo has been passed on 26th October, 2004, there was neither any such order nor there was any stay of the order during the period from July to October last. However, the fact remains in view of the issuance of Rule in the Writ Petition No.8270 of 2004 that the learned Single Judge of this Court had directed the maintenance of status quo, obviously, the status quo would be as it was on 26th October, 2004. Once it is not in dispute that there was no change in the circumstances from those which were prevailing on the date when the order was passed by the Co-operative Appellate Court to the date of passing of the order on 26th October, 2004 by the learned Single Judge, the status quo would virtually be the direction to maintain the same situation which was prevailing on the date on which the Co-operative Appellate Court had passed its order. Consequently, it will have virtually the effect of stay to the order passed by the Co-operative Appellate Court as the issuance of direction to maintain the status quo would

not require removal of the flower pots or keeping the terrace open for common use of the members of the said society, as otherwise had been directed by the Co-operative Appellate Court by its order.

4. Viewed from this angle, therefore, merely because during the period from July to October last, the respondents have not complied with the order, that would not be a justification for initiation of the contempt proceedings, at this stage, when the learned Single Judge by his order dated 26th October, 2004 passed in Writ Petition No.8270 of 2004 has already directed to maintain the status quo. Considering the same, therefore, at this stage, there is no case for proceeding against the respondents for contempt of Court, and hence, the Contempt Petition is rejected.